IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE THOTTATHIL B.RADHAKRISHNAN

FRIDAY, THE 27TH JULY 2007 / 5TH SRAVANA 1929

WP(C).No. 12433 of 2004(E)

PETITIONER:

MARY THOMAS ATTULLIL, W/O.LATE THOMAS,
POYYACHIRA, KAKKANAD KARA & VILLAGE,
KANAYANNUR TALUK.

BY ADV. SRI.K.RAVEENDRAN

RESPONDENTS:

THE SECRETARY, THRIKKAKARA GRAMA
PANCHAYATH, KAKKAND.

BY ADV. SRI.V.M.KURIAN
SRI.A.V.THOMAS
SRI.MATHEW B. KURIAN
SRI.K.T.THOMAS

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 25/07/2007, ALONG WITH OP NO. 11142 OF 2000, THE COURT ON 27/07/2007 DELIVERED THE FOLLOWING:

APPENDIX in WPC.12433/04

PETIITONER'S EXHIBITS:

EXT.P1: TRUE COPY OF THE JUDGMENT DATED 23.3.2004 IN W.P(C).9904/04 PASSED BY THIS HON'BLE COURT.

EXT.P2: TRUE COPY OF THE COMMISSION REPORT AND THE TWO SKETCH AND PLAN PREPARED BY THE COMMISSIONER DATED 3.1.2002.

EXT.P3: TRUE COPY OF THE ORDER OF DISMISSAL DATED 18.12.2003 IN O.P.NO.11142/00(B).

RESPONDENT'S EXHIBITS:

EXT.R1(a): TRUE COPY OF THE ORDER DATED 6.5.2002 ISSUED BY THE DISTRICT COLLECTOR, ERNAKULAM.

/TRUE COPY/

THOTTATHIL B.RADHAKRISHNAN, J.

O.P.No.11142 OF 2000 &
W.P(C).NO.12433 OF 2004

Dated this the 27th day of July, 2007

JUDGMENT

C.R.

These writ petitions are filed by the same person.

2. Petitioner's husband died on 27.3.1996. It is her case that his mortal remains were buried in the burial ground of the Thrikkakkara Grama Panchayat.

3. Petitioner filed O.P.No.5311/97 seeking a direction to keep the burial ground open between 8 a.m. and 1 p.m. on 26.3.1997 for offering prayers. It was then submitted before this Court that the Panchayat had given one hour time. Accordingly, that writ petition was disposed of on 24.3.1997 directing that the petitioner may be allowed to conduct religious prayers for one hour from 11 a.m. to 12 noon.

4. Thereafter, she filed O.P.No.18635/97 for a direction to keep the crematorium open on 2.11.1997 for the petitioner and family to observe ' All Souls Day'. In the light of the judgment in O.P.No.5311/97, this Court permitted the petitioner to have religious ceremonies for one hour, from 11 a.m. to 12 noon on 2.11.1997.

5. The petitioner then filed W.P(C).9904/04 seeking the same relief of offering prayers on 26.3.2004 stating that it was the death anniversary of her late husband. Relying on the earlier judgments, a direction was issued by this Court by judgment dated 23.3.2004 granting her such relief during every year rather than move this Court for such relief.

6. O.P.No.11142/00, which was pending in the meanwhile, is filed seeking to call for the records leading to “the order by which the 20 cents of Latin Catholic Church cemetery at the eastern end of Keeleri Mala in Kakkanad Village in Sy.No.341/1 (Athani Public Cemetery) is being kept under lock and key of

respondents 1 and 2 and thereby preventing it being used for disposal of dead bodies of the sect to which the petitioner belongs and quash the same and order opening and licensing of the same for future burials." Petitioner also seeks order commanding the respondents "to keep open 1.8 cents burning and burial ground for public use and the public cemetery at Keeleri Mala in Kakkanad Village in Sy.No.341/1 (Athani Public Cemetery) of 20 cents on the eastern side as the public cemetery of St.Antony's Church, Athani, Kusumagiri without any let or hindrance in future after settling the trespassers who had occupied the road to the burning and burial place." The documents relied on in that writ petition are the judgments of this Court in O.P.No.5311/97 and O.P.No.18635/97.

7. W.P(C).No.12433/04 is filed seeking a direction to the respondent "to grant the 20 cents allotted and allowed to dispose of dead bodies in the portion where the 3 dead bodies have been disposed of in the area allotted to the Latin Catholic Parish of the St.Antony's Church, Athani in Sy.No.341/1 in Keeleri Mala in

Kakkanad Village on the eastern side forthwith." Directions commanding the respondent to remove the mud and soil dumped and piled up to the height of 20 feet in and around the 3 tombs existing and reported by the Advocate Commissioner in his report to the Court in Ext.P2 and to restore the burial ground to its original form and not to defile the sculpture and possible destruction or defiling of it due to the sudden onslaught of monsoon are also sought for.

8. Having regard to the matters arising for decision, these two writ petitions are consolidated for consideration and hearing and being disposed of by this common judgment. In O.P.No.11142/00, a Commissioner was appointed. The report filed by him is also placed as Ext.P2 along with W.P(C).No. 12433/04.

9. The counter affidavits on record are filed by the District Collector as also on behalf of the Panchayat.

10. The counter affidavit of the Panchayat would show that by Government Order dated 1.11.1983, an item of land was transferred to the Thrikkakkara Grama Panchayat for preparing a public burial ground. The said parcel having an extent of 1.07 acres was secured by the Panchayat constructing a compound wall. The District Medical Officer inspected the place and reported that sanction for functioning the public burial ground could be granted on certain conditions. Though the land was allotted in 1983, there were certain obstructions to the passage to the burial ground since 21 families were living around the Panchayat burial ground, essentially, occupying the Government land, unauthorisedly. On the basis of discussions at various levels to remove those encroachers with the junction of the District Collector, the Additional District Magistrate, the Panchayat authorities etc., 50 cents of land is stated to have been surrendered by 'Providence Home' to rehabilitate the 21 families. That institution is one taking care of terminally ill patients and in lieu of the 50 cents of land so surrendered, 15 cents was set apart by the Panchayat from the public burial

ground for the purpose of Providence Home. I may also at once notice that even on the date of visit of the Commissioner, going by his report, a death had occurred in Providence Home. Thus managing the local situation, the Panchayat has commenced the activities of crematorium. It is the assertion of the Panchayat that no further land could be identified and parted off in favour of any particular community, sect or group.

11. The District Collector, in the counter affidavit, has stated that there was apparent law and order situation and though prayers were permitted in terms of the judgments of this Court, it is necessary that the Panchayat carries on its activities in relation to the burial ground and that the Panchayat has not set apart any extent of land exclusively for the Latin Catholic community to which the petitioner belongs or to St.Antony's Church, to use as cemetery, as contended by the petitioner.

12. The aforesaid facts would show that what initially came to this Court as a request for offering prayers on the successive

death anniversaries of the petitioner's late husband has now turned out into another hue and cry, being held out, for a parcel of land to be carved out of a public burial and burning ground, to be left exclusively for the community to which the petitioner claims to belong. In so far as the allotment to 'Providence Home' is concerned, going by the materials on record, the decision is taken by the Panchayat with the junction of the District Collector, A.D.M. etc. and on the basis of public interest, it cannot be treated that the earmarking of 15 cents of land for the purpose of Providence Home is contrary to law or without authority. It specifies the public purpose of providing an arrangement to ensure the rehabilitation of people who were living in the Government land which was required for the public purpose of entry into the newly formed public burial ground and also to provide available spaces for a vault-type crematorium to handle the human remains of the unfortunate people who die in Providence Home where they are taken care of while being terminally ill.

13. Learned counsel for the petitioner contended that the right to religious practices in connection with death and memorial services are essentially part of religion and therefore, fall within the pale of religion in the backdrop of the Constitution. He also contended that such rights, particularly that of people belonging to minority groups, have been recognised in the Constitution. Reference is made to the decision of the Apex Court in **Sri.Venkataramana Devaru and Others** v. **State of Mysore and Others** (AIR 1958 SC 255), the decision of Madras High Court in **The Commissioner, Hindu Religious Endowments, Madras** v. **Sri.Lakshmindra Thirtha Swamiar of Sri Shirur Mutt** (AIR 1952 Madras 613) and the decision of the Patna High Court in **Rana Muneshwar Kumar Singh** v. **The State of Bihar and Others** (AIR 1976 PATNA 198) to contend that such rights have to be recognised and religion is a positive aspect and there is no reason why the claim of the petitioner could not be allowed. He also relied on the decision in **Century Spinning & Manufacturing Co. Ltd., and another** v. **The Ulhasnagar Municipal Council and another** (AIR 1971 SC 1021) to argue

that by having permitted three dead bodies to be buried, the respondents are estopped from refusing to permit burial of other dead, belonging to the Latin Catholic community by earmarking a particular parcel of land, as claimed by the petitioner, exclusively for the use of the community to which the petitioner belongs.

14. Admittedly, the parcel is Government land. It was given to the Panchayat for a specific public purpose, viz., the formation of a burial ground. It is stated by the counsel appearing on all sides that before the burial ground in question came up in Thrikkakkara, dead bodies were brought from Thrikkakkara to the cremation ground in Pachalam in Ernakulam for being disposed of. The Kerala Panchayat Raj (Burial and Burning Ground) Rules, 1998 and its predecessor rules do not have any foundation for creating any classification among Indian citizens for the purpose of disposal of their dead bodies. The property of the State Government is a secular holding. When that is given to the Panchayat for a public purpose, it again continues to be a

public holding which has a secular character. That secular character and nature of the holding cannot, in any manner, be interfered with or violated on any plea of any religious denomination. This is not a case where the Government decided to give any parcel of property for the purpose of any cremation ground for any particular sect or community. It is for the purpose and benefit of the public at large.

For the aforesaid reasons, I do not find any merit in these writ petitions. They are accordingly dismissed. However, it is clarified that following the judgment in W.P(C).9904/04, the petitioner will be entitled to the benefits which have been granted as per that judgment.

THOTTATHIL B.RADHAKRISHNAN,
Judge

kkb.

==========

THOTTATHIL B. RADHAKRISHNAN, J

O.P.11142/00 & WPC.12433/04

JUDGMENT

TH JULY, 2007.

==========